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1 quality related values in Class I areas.

2 Since 1982, all major sources and major
3 modifications permitted in North Dakota have
4 obtained from the National Park Service such
5 certification. And as was discussed here earlier
6 this morning by Mr. Long, until Region VIII's recent
7 letters to North Dakota, EPA has never contended
8 that the Class I increments must be met when a
9 variance has been granted. EPA's recent position on
10 variances reverses more than two decades of practice
11 and interpretation and is directly contrary to the
12 Clean Air Act, which exempts such variance sources
13 from compliance with the Class I increment.

14 As the court in the Alabama Power case
15 noted, such waivers of the Class I increment have,
16 and I quote, vitality and recognition that
17 facilities granted special consideration under these
18 provisions are, in effect, treated as facilities
19 operating in compliance with the provisions of the
20 Act. And I have the citations of the Alabama Power
21 case there for the record.

22 In regards to the third issue in the notice
23 of hearing, the Lignite Energy Council supports the
24 Department of Health approach, provided industry
25 responses to DOH's baseline data request of July of

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1 2001 are incorporated and adopted by the Department
2 of Health. Additionally, allowable emissions should
3 be included by the Department of Health in its
4 determination of baseline as authorized by the North
5 Dakota Administrative Code.

6 In regards to the fourth issue in the
7 notice of hearing, the Lignite Energy Council
8 supports the Department of Health proposal to
9 measure consumption of the PSD increment in Class I
10 areas based on the ambient concentration of sulfur
11 dioxide caused by baseline sources as compared to
12 the increment-consuming sources. Again, pursuant to
13 the North Dakota Administrative Code.

14 On the issue of baseline concentrations
15 raised in the fifth issue of the notice of hearing,
16 the Lignite Energy Council supports the Department
17 of Health proposal, but only if it does not
18 adversely curtail or otherwise impact existing
19 operations. We would request that the Department of
20 Health defer to our individual member concerns on
21 this issue and to make the appropriate adjustments.

22 Finally, on the sixth issue, the Lignite
23 Energy Council supports the Department of Health
24 proposal to not retroactively apply Class I SO2
25 increments to previously issued PSD and construction

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1 permits as it relates to the Fort Peck Indian
2 Reservation redesignation of its tribal lands. We
3 believe the contrary EPA proposal on this issue
4 cannot be supported legally.

5 In summary, we support the Department of
6 Health technical assessment and proposed
7 determination indicating that there are no
8 violations of applicable PSD increments for sulfur
9 dioxide and that the current North Dakota SIP is
10 adequate to protect the applicable PSD increments
11 and to prevent significant deterioration. Again, as
12 you deliberate on the various testimonies you have
13 or will receive, we ask that you keep in mind that
14 our state has the best air quality because of the
15 Department of Health record and that it meets or
16 exceeds the federal and state standards and that our
17 air quality will continue to get better.

18 And at this time I'll be happy to try and
19 answer any questions. That concludes my written
20 testimony. Any questions I will be more than happy
21 to try to answer.

22 MR. SCHWINDT: Are there any questions for
23 Mr. Dwyer?

24 MR. WITHAM: Mr. Dwyer, my name is Lyle
25 Witham. I'm Assistant Attorney General. The

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1 definition in North Dakota's rules of actual
2 emissions and also the definition in EPA's rules
3 defines actual emissions at one point as the actual
4 rate in tons per year, and it also has an
5 alternative definition of actual emissions as
6 allowable emissions, and the '80 preamble to those
7 rules in The Federal Register provided kind of a
8 cookbook about how EPA suggested that those two
9 definitions be applied.

10 My first question is, what are your
11 thoughts and feelings on how that particular
12 definition should be applied as a policy matter for
13 the State?

14 MR. DWYER: Well, Mr. Witham, as I
15 indicated in my testimony, we support the Department
16 of Health's approach, but I also think that there is
17 room or a policy option, if the Department so
18 chooses, to also use allowable emissions in
19 establishing baseline. And I realize that the
20 Department has proposed that you utilize the same
21 approach to establishing baseline whether you
22 consume increment or not, and I guess what I suggest
23 was that the Department would consider allowable in
24 determining baseline because it would expand
25 increment.

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MR. WITHAM: What are your thoughts on the suggestions then in earlier comments and testimony presented today that the allowables can be something other than as defined in the rules, both the Federal rules and the State rules?

MR. DWYER: Would you be more specific as to what your question is?

MR. WITHAM: Say, for example, a 100 percentile number or a 90th percentile number or some other number, some other methodology for establishing a definition of allowable emissions other than the language used in the rules.

MR. DWYER: Well, I think it's within the discretion of the Department of Health's purview to utilize the definitions that they have chosen in their proposal.

MR. WITHAM: I guess my question, another way of phrasing it, are we tied to the definitions as defined in the rules, or do we have the discretion to vary from those legal definitions?

MR. DWYER: Mr. Witham, I would -- I guess what I'd like to do is defer to legal counsel, submit that for the record, if that's okay.

MR. WITHAM: I have no further questions.

MR. SCHWINDT: Any other questions? If

demonstrated to exacerbate the conditions of people with lung disease and can contribute to the development of lung disease.

We urge the North Dakota Health Department to ensure full compliance with the State and Federal Clean Air Act. Air quality laws must be upheld in order to continue progress towards cleaner air, improve public health, and to reduce the suffering from lung disease. The adequacy of the North Dakota state implementation plan to prevent significant deterioration of air quality in our state which currently has an increment violation in the Class I area that needs to be addressed by reducing emissions of PSD, not by redesigning the North Dakota Health Department model to make the current SIP appear to be without violation. The North Dakota Health Department modeling indicated in 1999 that there was a violation and so did the EPA's modeling in 2000.

Also, you have heard previously that American Lung Association did release the State of the Air Report for 2002, which indicated that North Dakota received a grade A in our air quality. Any area that receives an A does not necessarily mean that that area is out of danger forever. It means

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not, thank you.

MR. DWYER: Thank you.

MR. SCHWINDT: At this time we'd like to allow some comments from the general public. Sue Kahler from the American Lung Association has indicated she had some comments that she'd like to share with us. If there are any other people after Ms. Kahler gets done, we will then take comments from those people.

MS. KAHLER: For the record, my name is Susan Kahler, and I'm the Executive Director of the American Lung Association of North Dakota. I appreciate the opportunity to make comments on the proposed determination of the adequacy of the North Dakota state implementation plan to prevent significant deterioration.

The American Lung Association of North Dakota respectfully submits the following comments on the proposed determination of adequacy of North Dakota's SIP to the prevention of significant deterioration.

The American Lung Association is a voluntary health organization dedicated to the prevention and control of lung disease. Air pollution, including sulfur dioxide, has been

that individuals and industry must minimize air pollution emission so that air quality does not degrade to unhealthy levels. Also, some very sensitive individuals, especially people with asthma, may experience health problems even at levels of -- even at a level of a grade A category. The report was only on ozone, not SO₂ or the regional haze.

In our state, right now, we continue to risk the public health from increasing fine particle pollution in areas people often go to to exercise and enjoy the outdoors. Many visitors to our national parks are at extreme risk for air pollution, especially from the fine particles produced by sulfur dioxide converting into sulfate particles. Those acidic particles are among the largest components of our fine particle air pollution, which has been linked to shortened lives through lung cancer and heart disease, among other health effects. You can cite this from a study as one specifically looking at health effects on hikers, and the cite of the study is mentioned in my testimony.

The results show with prolonged outdoor exercise, low-level exposures to ozone and PM_{2.5},

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1 and strong aerosol acidity were associated with
2 significant effects of pulmonary functions among
3 adults. Hikers with a history of asthma or a wheeze
4 had significantly greater air pollution-related
5 changes in pulmonary function.

6 In other words, air pollution makes it
7 harder for even healthy adult exercisers to breathe.
8 For those at special risk, the problems are more
9 serious. North Dakota should not further damage its
10 Class I areas.

11 The American Lung Association of North
12 Dakota strongly supports the concept of ensuring
13 that air pollution standards protect the health of
14 our citizens and that if current violations exist,
15 they should be addressed to reduce the PSD
16 violation. We also support stricter pollution
17 control requirements for power plants, including
18 those that will bring older power plants up to the
19 current emission control standards. The air quality
20 laws must be upheld in order to continue progress
21 toward cleaner air and improved public health.

22 I appreciate this opportunity.

23 MR. SCHWINDT: Thank you.

24 MR. BAHR: Susan, I understand the position
25 of strongly supporting the concept of ensuring that

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1 air quality standards that protect our citizens and
2 others are met. Does the American Lung Association
3 take any position regarding whether the current
4 model or method of the Department is or is not
5 correct factually or legally, or are you just saying
6 we support whatever is going to keep our air the
7 cleanest?

8 MS. KAHLER: That's correct, yeah.

9 MR. SCHWINDT: Okay. Any other questions?
10 Thank you, Susan. Is there anybody else that is
11 interested in testifying?

12 MR. GREEN: North Dakota is absolutely a
13 fine state to live in.

14 MR. SCHWINDT: Sir, could you --

15 MR. GREEN: I come from Pennsylvania.

16 MR. SCHWINDT: Could you use the
17 microphone, please.

18 MR. GREEN: What?

19 MR. SCHWINDT: Could you use the
20 microphone?

21 MR. GREEN: Oh, sure.

22 MR. SCHWINDT: And tell us your name,
23 please.

24 MR. GREEN: I keep hearing about the clean
25 air. It is. With a predominantly northwest wind

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1 blowing 25 to 35 miles an hour, we ought to have
2 clean air here. You know, if we've got any
3 pollutants, we send them to Minnesota. But I ask
4 one question. Where is our heavy industry that
5 would give us pollution? Where are our steel mills,
6 refineries, acid plants, chlorine plants, resin
7 plants, the heavy industry? You get down around --
8 I spent 15 years in the Chicago area, and I worked
9 in Mobil's Refinery at East Chicago. You get down
10 to that end of Lake Michigan and you find out what
11 real pollution is. As chief engineer for three and
12 a half years for Fenell on the south side, we
13 automated most of the ore boats. We took them from
14 coal to No. 2 fuel. These were the Kaiser World War
15 II battle wagons and, you know, we flat don't know
16 what pollution is. Thank you.

17 MR. SCHWINDT: Thank you. Anybody else
18 wishing to comment? Seeing no one else from the
19 general public that wants to comment, is there
20 anybody that was scheduled for tomorrow that would
21 be willing to provide some testimony this evening --
22 or this afternoon? Tomorrow we had Dakota Resource
23 Council scheduled, Great Northern Energy, Montana-
24 Dakota Utilities, and Basin Electric. Those were
25 the four that we had scheduled for tomorrow. Is

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1 there anybody that would be willing to begin this
2 evening? It's 4 o'clock now. If not, we'll just
3 stand adjourned until tomorrow at 9:00 a.m. Thank
4 you for coming.

5 (Recessed at 4:00 p.m., Monday, May 6,
6 2002.)

BEFORE THE NORTH DAKOTA DEPARTMENT OF HEALTH

PROPOSED DETERMINATION OF THE
ADEQUACY OF THE NORTH DAKOTA
STATE IMPLEMENTATION PLAN TO PREVENT
SIGNIFICANT DETERIORATION

TRANSCRIPT OF
HEARING

VOLUME II

PAGES 200-456

Taken At
Brynhild Haugland Room
State Capitol
Bismarck, North Dakota
May 6, 7 & 8, 2002

BEFORE MR. DOUG BAHR AND MR. FRANCIS SCHWINDT
-- CO-HEARING OFFICERS --

EMINETH & ASSOCIATES
Court Reporters
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<p>Page 200</p> <p>BEFORE THE NORTH DAKOTA DEPARTMENT OF HEALTH</p> <p>PROPOSED DETERMINATION OF THE ADEQUACY OF THE NORTH DAKOTA STATE IMPLEMENTATION PLAN TO PREVENT SIGNIFICANT DETERIORATION</p> <p>TRANSCRIPT OF HEARING</p> <p>VOLUME II</p> <p>PAGES 200-456</p> <p>Taken At Brynhild Haugland Room State Capitol Bismarck, North Dakota May 6, 7 & 8, 2002</p> <p>BEFORE MR. DOUG BAHR AND MR. FRANCIS SCHWINDT -- CO-HEARING OFFICERS --</p>	<p>Page 202</p> <p>(The proceedings continued, commencing at 9:06 a.m., Tuesday, May 7, 2002, as follows:)</p> <p>MR. SCHWINDT: Sorry for the delay this morning. It's now 9:05 a.m. We'll get the hearing started again. If there is anybody from the general public or others that are interested in making any kind of presentation, please contact me and we can schedule you. It still does look like we're going to be going through most of tomorrow, as well, so you can plan accordingly.</p> <p>So this morning we'll start with the Dakota Resources Council. Scott.</p> <p>MR. FRY: Hello. Thank you for allowing us to present testimony today. My name is Scott Fry and I'm an organizer for Dakota Resource Council. We actually have some members here who are present to give testimony, and I would like to allow them to speak first and then I will close and answer any questions anyone has.</p> <p>MR. KARDONG: My name is Terrence Kardong, and I'm one of the monks of Assumption Abbey in Richardton. I'm also a member of the Energy Policy Committee of the Dakota Resource Council.</p> <p>If you visit the Abbey, we will take you to our dining room. The great attraction of the</p>																								
<p>Page 201</p> <p>C O N T E N T S</p> <table border="1"> <thead> <tr> <th>WITNESSES:</th> <th>Page No.</th> </tr> </thead> <tbody> <tr><td>TERRENCE KARDONG</td><td>202</td></tr> <tr><td>GWEN THOMPSON</td><td>207</td></tr> <tr><td>CHARLES KURSZEWSKI</td><td>209</td></tr> <tr><td>DONNA KURSZEWSKI</td><td>215</td></tr> <tr><td>SCOTT FRY</td><td>222</td></tr> <tr><td>RICHARD VOSS</td><td>244</td></tr> <tr><td>RICHARD SOUTHWICK</td><td>246</td></tr> <tr><td>ROBERT CONNERY</td><td>285</td></tr> <tr><td>KIRK WINGES</td><td>332</td></tr> <tr><td>ROBERT J. HAMMER</td><td>375</td></tr> <tr><td>ROBERT J. PAINE</td><td>396</td></tr> </tbody> </table> <p>-----</p>	WITNESSES:	Page No.	TERRENCE KARDONG	202	GWEN THOMPSON	207	CHARLES KURSZEWSKI	209	DONNA KURSZEWSKI	215	SCOTT FRY	222	RICHARD VOSS	244	RICHARD SOUTHWICK	246	ROBERT CONNERY	285	KIRK WINGES	332	ROBERT J. HAMMER	375	ROBERT J. PAINE	396	<p>Page 203</p> <p>dining room is a spectacular view to the north. On a clear day you can see the smoke and steam arising from the stacks at Beulah, which is 50 miles away.</p> <p>Now, I've thought a lot about that site. Monks have a lot of time to think. It's not such an ugly site except on the days when the emissions turn brown. Nor do we often smell it since we're not in the path of the prevailing winds. But it still makes me think because there's a lot more there than meets the eye.</p> <p>We read in the papers these days that the State Health Department is in conflict with the Environmental Protection Agency. The argument is over the methods employed to determine whether these power plants are in violation of the Clean Air Act. The scientific details of this argument are so complicated as to eliminate all but specialists from the discussion. Perhaps that's the intent. But some of us refuse to be brushed aside.</p> <p>The basic scenario is not hard to fathom. The EPA does not think that the State Health Department is strict and careful as it should be in policing the emissions that are affecting our air, especially the air in the parks. The State Health</p>
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1 Department seems to resent this questioning of its
2 methods and its integrity. It accuses the EPA of
3 unwarranted intrusion and of creating problems
4 where none exist.

5 Since I cannot adequately judge the
6 technicalities of the issue, I must fall back on a
7 broader view of the situation. For one thing, I'm
8 rather uneasy to have our State Health Department
9 arguing for laxer air standards. While it may be
10 an unfair assumption, it looks suspiciously like
11 they are favoring the health of the power companies
12 rather than that of the general population of North
13 Dakota. Even the impression of doing that should
14 be a thing to be studiously avoided.

15 As far as the charge that the EPA
16 represents unwelcome federal intrusion, well, the
17 state legislature was more than happy three years
18 ago to lower our air standards to be in compliance
19 with the fed's. It seems that the feds are all
20 right as long as they represent lower standards.
21 But the bottom line is that the air is getting
22 dirtier. Indeed, that's the ultimate criterion in
23 this whole affair, will it make the air cleaner or
24 dirtier?

25 It is highly unseemly for the State Health

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1 Department to be on the side of dirtier air for any
2 reason. Of course, this is not just an argument
3 about inscrutable computer models and increments
4 and such things. It's about practical questions
5 such as these: Shall we build more power plants?
6 Shall the future of North Dakota lie in digging up
7 and burning more lignite? Or should we be looking
8 more to our other resource, namely, the everlasting
9 wind?

10 There's some of us who think that the wind
11 is the future. Not wind alone, of course, because
12 it must be backed up with fossil fuel, but it seems
13 to me that we won't get into the wind business in
14 earnest until the power companies get into it
15 themselves. Right now they're hanging onto the
16 past rather than plunging into the future.

17 Who or what will turn them around? I
18 think one part of the process lies in regulation.
19 If they cannot build more coal-fired plants due to
20 the pollution cap, they will have to turn to other
21 renewable sources.

22 We believe that it's up to the regulatory
23 agencies to keep a firm grip on this process and
24 not let the plants expand beyond the local
25 pollution. I mean, when the Minnesota Timber

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1 Wolves got caught violating the salary cap in the
2 NBA, they lost five years of first-round draft
3 choices, the owner and the general manager were
4 barred from having anything to do with the team for
5 about six months.

6 One aspect of this whole situation that's
7 especially vexing to me has to do with the aging,
8 indeed aged, plants such as Leland Olds and Milton
9 R. Young. These plants were grandfathered into the
10 Clean Air Act years ago on the assumption that they
11 would be shut down before long. But they're still
12 going strong, and it appears that they will go on
13 and on. They are the main polluters and they're
14 also big money for the power companies. There's
15 also some suspicion that they're being rebuilt bit
16 by bit so they can go on. They're like those B-52s
17 up in Minot which never wear out because they're
18 being replaced bit by bit.

19 To someone like me, unable to understand
20 the scientific data of this controversy or even the
21 basic scenario, the historical data, it still looks
22 like something of a smoke screen. Do we let this
23 situation continue or don't we? The EPA has
24 indicated that according to their runs and their
25 testing, they cannot continue. The State Health

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1 Department interpretation would seem to be the
2 opposite, it can continue. In fact, it must
3 continue if the power companies are to continue to
4 record healthy profits and avoid getting into the
5 renewable energy development.

6 To conclude then, I do not think that the
7 North Dakota state implementation plan is
8 adequate. I have to leave the technical argument
9 to the experts, but the end results are plain
10 enough for anybody to see. It simply weakens the
11 quality of our air. Thank you.

12 MS. THOMPSON: My name is Gwen Thompson.
13 I now live in Bismarck, but spent most of my life
14 farming near Center. Thank you for giving me a
15 chance to speak today.

16 I'm here to say let's clean up our air.
17 We love North Dakota, but isn't it time to say we
18 can make it a better and healthier place to live
19 and raise our families? It is said that North
20 Dakota has some of the cleanest air in the nation
21 compared to some of the more urban states. This is
22 true. But why should we compare ourselves to the
23 worst? We should work on being the best.

24 All those brown streaks in the sky tell
25 all of us something is wrong with our air. We have

<p style="text-align: right;">Page 208</p> <p>1 had company come from out of state and get a tight 2 throat and sore eyes driving into coal country. 3 After leaving North Dakota it finally clears up. 4 People should not have to deal with this. This is 5 technology -- there is technology out there that 6 can make this go away, but grandfathered plants 7 have refused to shut down over the years and are 8 allowed to pump out thousands of tons of pollution 9 into our air with little or no regard to our 10 health. I have asthma so I understand what others 11 go through, plus the expensive medication. 12 In a study that the State Health 13 Department helped fund it was determined that 14 children in coal country have a 15 percent higher 15 rate of asthma than children in the rest of the 16 state. Why this is the case is obvious to all of 17 us but the coal industry and scientists. The only 18 thing different in coal country from the rest of 19 the state is the power plants we have there. 20 Let's look at economic development. Can 21 we say everything we grow is healthy? We have 22 great fishing. Can we say eat your fill? No. 23 Because we have a high level of mercury in the 24 larger fish in many of our waterways in the state. 25 Of course, there have been no studies explaining</p>	<p style="text-align: right;">Page 210</p> <p>1 Charles Kurszewski. I live in Emmons County. I'm 2 a farmer and a DRC member. 3 The intent in submitting my views on the 4 issue of air quality in North Dakota is not to 5 offer staggering new information and scientific 6 data. The hearing officer will, I'm sure, be 7 inundated by a mountain of facts, graphs, models, 8 projections, conjectures, and somewhere in the 9 midst of it all some bold-faced lies. In sorting 10 through all this I would ask that the simple views 11 of a citizen be heard and considered. 12 My family and I moved to North Dakota four 13 years ago with the hope of establishing a 14 sustainable life on our farm in Emmons County. 15 While we despair the outmigration of rural North 16 Dakota, the painful, slow demise of many small 17 towns, we do relish the solitude, the open spaces 18 and the wonderful vistas offered by this state's 19 natural beauty and state's landscape. 20 Amid this splendor and serenity, reality 21 has slowly, yet steadily, intruded. First, we 22 noticed in the evening darkness of our northwest 23 sky the urban glow of this very city, some 60 miles 24 distant. Then, too often, we see the grandeur of 25 rose-colored sunsets, then the layers of reddish-</p>
<p style="text-align: right;">Page 209</p> <p>1 why this is, but, again, I think we know. 2 I hope the State Health Department helps 3 make the dream of North Dakota having the cleanest 4 air in the country real and see to it that all are 5 created equal, the big energy businesses and our 6 citizens. 7 Now the State is in the process of trying 8 to wiggle out of their responsibilities and control 9 of the Clean Air Act. In studies done over the 10 last few years it has been shown that North Dakota 11 is in violation of the Clean Air Act, but rather 12 than working with what they already know, they are 13 working to undermine the concerns and desires of 14 the citizens of North Dakota by helping the coal 15 industry resolve the situation in their favor. 16 Because of these studies, it is plain as 17 day that North Dakota's state implementation plan 18 of the Clean Air Act is not adequate. North Dakota 19 needs to follow the regulations, guidelines and 20 directions of the Environmental Protection Agency 21 in developing their modeling, not the direction of 22 the industry they were put here to regulate. Thank 23 you. 24 MR. SCHWINDT: Thank you. 25 MR. KURSZEWSKI: Good morning. My name is</p>	<p style="text-align: right;">Page 211</p> <p>1 brown clouds out along the horizon. Our awe of 2 these sights is tempered with the knowledge that 3 their existence is attributable to man's pollution, 4 carelessness, and greed rather than the planned 5 handiwork of a benevolent and artistic creator. 6 North Dakota officials will readily point 7 out how well our environment and air quality 8 standards measure up, especially in comparison to 9 other parts of the country. While we are easily in 10 compliance with most facets of the federal Clean 11 Air Act on a statewide basis, it is in the Class I 12 areas in the state that the levels of certain 13 pollutants exceed the statutory limits set by law. 14 And it appears here is where the battle lines will 15 be drawn. 16 The state implementation plan, or SIP, is 17 formulated, as I understand it, to provide a 18 framework by which air quality levels can be 19 brought back to within the limits set by law. It 20 is the questionable enthusiasm of the appropriate 21 agencies endowed with this responsibility that 22 brings me here today. The current plan, though 23 approved by the EPA, has not been fully and 24 aggressively implemented to date. With the 25 possibility of new modeling programs, new benchmark</p>

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1 determinations, revised data analysis, with all
2 these new things happening, one very timeless
3 activity remains the same, those that have the most
4 to gain from lessening standards and have the most
5 power and influence will get what they want at the
6 expense of the health and safety of the rest of the
7 population.

8 One needs only to look at our national
9 leadership and the headlong rush to further the
10 goals of the energy industry. The constant assault
11 on every front of longstanding conservation and
12 environmental safeguards is a threat not only to
13 this generation, but to our children and our
14 children's children. The insidiousness of today's
15 efforts, however, is that the positions of power
16 designed to protect our health, safety and natural
17 resources are being staffed by the very powers who
18 stand to gain the most by relaxing or eliminating
19 present environmental laws. Administrators who in
20 the past have admirably performed their
21 safeguarding and legal duties appear to be
22 systematically reassigned, discredited or forced
23 from their positions. I cite the recent
24 resignations of two top-level EPA administrators, a
25 chief prosecutor and the Washington-based

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1 ombudsman, who have walked out in frustration over
2 the new directions of their agency.

3 I ask the North Dakota Department of
4 Health to take a strong, definite stand on the
5 issue of air quality. The fuzzy math method of
6 addressing health and safety issues is unacceptable
7 and should not be the approach used in meeting
8 these challenges. Publicly funded agencies are too
9 often the only protection we have from the grasp
10 and greed of special interests whose only goal is
11 to improve their bottom line, increase market
12 share, and make their stockholders and key officers
13 happy.

14 Let me use an example closer to home that
15 better illustrates my call for concise and positive
16 action on an important issue. The North Dakota
17 Fish and Game Department's biennial fishing guide
18 refers on page 19 to a fish consumption advisory.
19 This advisory was issued by the Department of
20 Health, Division of Water Quality, which publishes
21 its own trifold brochure on this subject. The
22 state fishing guide lists the phone number of the
23 Health Department and gives the website for this
24 information. The Health Department provides copies
25 of this brochure at its office and copies may be

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1 found at the Fish and Game offices, though not in
2 the brochure racks filled with the recreational and
3 wildlife materials. Both agencies have done their
4 job. Both will provide the information upon
5 request. Yet, if you ask most people, few know of
6 this advisory. This, unfortunately, includes the
7 people who should be informed, namely children five
8 and under, pregnant women and nursing mothers.

9 The North Dakota state implementation plan
10 needs to be effective, concise, forceful, and,
11 above all, as its name implies, it needs to be
12 implemented. If the current plan fails to serve
13 its purpose, and the evidence points to that, then
14 it needs to be redone with one goal in mind. That
15 goal should be to assure, and I quote, that North
16 Dakota is a healthy place to live, close quote, and
17 be dedicated, again quote, to the belief that each
18 person should have an equal opportunity to enjoy
19 good health, close quote. It must be committed,
20 again I quote, to the promotion of healthy
21 lifestyles, protection and enhancement of the
22 environment and provision of quality health care
23 services for the people of North Dakota, close
24 quote. That, by the way, is the mission statement
25 from the Health Department's home page.

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1 We do not gain anything by giving away our
2 precious resources. We as a people stand only to
3 lose by lowering our standards. Nowhere have we
4 been given the right to benefit ourselves at the
5 expense of our neighbors and future generations.
6 Stop the deterioration and destruction of our
7 resources and environment so that only a select few
8 can benefit. I ask the Health Department and all
9 other appropriate state agencies to establish a
10 state implementation plan that safeguards the
11 natural beauty which we praise today for those
12 generations that will follow. Thank you.

13 MR. SCHWINDT: Thank you.

14 MRS. KURSZEWSKI: The label

15 environmentalist serves as a triggering mechanism
16 to close all eyes and ears to further consideration
17 of human health issues arising from the profoundly
18 real deterioration of our land, air, water, and
19 grasslands in North Dakota. Anyone raising a voice
20 of concern in regard to this assault against our
21 land, air, water, and grasslands from coal mining
22 practices and coal plant emissions is dismissed as
23 an environmentalist by the press, spokespersons for
24 elected officials, who, I may add, seem to have
25 ceased being able to express their own points of

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1 view, and, curiously, even by the ag cooperatives
2 and associations, which increasingly represent the
3 interests of big business rather than the farmers
4 who actually live in North Dakota.

5 My concern in regard to human health
6 issues arising from coal-fired power plant
7 emissions in North Dakota will, therefore, be
8 expressed to you as a conservationist.

9 Theodore Roosevelt, North Dakota's most
10 famous resident, the founding father of the
11 conservation of natural resources movement, whose
12 lifework is memorialized in the Theodore Roosevelt
13 National Park, stated, "When, at the beginning of
14 my term of service as President, I took up the
15 cause of conservation, I was already fairly well
16 awake to the need of social and industrial justice;
17 and from the outset we had in view, not only the
18 preservation of natural resources, but the
19 prevention of monopoly in natural resources, so
20 that they should inhere in the people as a whole."
21 "Inhere" being an archaic term apparently, means
22 to be a fixed element of attribute; to belong - as
23 rights; as, for example, in a democracy,
24 sovereignty inheres in people.

25 We are very few in number here in North

1 Administration's so-called Economic New World
2 Order. Based solely on this serendipitous foray
3 into Who's Who of Corporate America, my confidence
4 in the concept of representation of the people
5 might have suffered serious disappointment.

6 However, prior to this revelation it was
7 already my conviction that the North Dakota State
8 Industrial Commission has failed in its implicit
9 mandate to promote and regulate natural resources,
10 and I quote, in a manner that prevents waste and
11 protects the rights of mineral and, I would hope,
12 landowners, close quote, and by failing, and I
13 quote, to exercise jurisdiction and authority over
14 all persons and property, public and private,
15 necessary to enforce the provisions of conservation
16 legislation, close quote, as stated in the North
17 Dakota Blue Book 2001-2003 being implied to the
18 Industrial Commission's jurisdiction over coal
19 resources and over the State Department of Health,
20 Environmental Health Section issues arising from
21 the violations of coal-fired power plant emission
22 standards defined in the EPA's Clean Air Act.

23 It is also my conviction that the State
24 Department of Health, Environmental Health Section,
25 has failed in its implicit mandate to, quote,

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1 Dakota, less than 650,000 population in the entire
2 state. I am concerned that because there are so
3 few of us to raise our voices against the
4 aggressiveness of corporate greed, the power
5 industry's interests are being served by our
6 elected and appointed state representatives at the
7 expense of the interests of those of us who
8 continue to live and pay taxes here.

9 While researching background information
10 on the North Dakota state website for this hearing,
11 I happened upon the page listing Republican
12 National State Elections Committee contributions to
13 the state in the year 2000. I must express a
14 degree of shock over the inappropriately generous
15 sums granted to the North Dakota Republican
16 Election Committee.

17 Curious, I sought to discover who these
18 108 former North Dakotans were who had become so
19 successful as to be able to contribute from 5,000,
20 the least amount, to 100,000, 250,000, even
21 \$350,000 lump sums, constituting a total of
22 \$6,864,705.78 to the State's election process.
23 With very little effort, my research uncovered a
24 tangle of interconnected corporate and banking
25 interests, many directly tied to the Bush

1 safeguard the air, water and physical environmental
2 quality for North Dakota, close quote, by failing
3 to, quote, work closely with the federal
4 Environmental Protection Agency, close quote, and
5 by failing to enforce the state and federal
6 environmental laws through unbiased, quote,
7 permitting, inspecting, sampling, analytical
8 services and monitoring of activities, close quote,
9 as stated in the North Dakota Blue Book 2001
10 through 2003, as applied to the violations of coal-
11 fired power plant emission standards defined in
12 EPA's Clean Air Act.

13 The redefining, shifting, reworking, and
14 remodeling of terms, figures, measurements, puffs,
15 and laws is not the mandate of the North Dakota
16 Department of Health, Environmental Health Section,
17 nor the Environmental Protection Agency, for that
18 matter. The mandate is to safeguard and to protect
19 the, quote, air, water and physical environmental
20 quality for North Dakota in order to safeguard and
21 to protect the health of the people of North
22 Dakota, as well as to safeguard and protect the
23 health of the people outside our state borders
24 living downwind of North Dakota power plant
25 emissions.

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<p>1 Public entities whose purpose is to 2 protect must not betray the trust vested in them. 3 There is absolutely no reason for the weakening of 4 emission standards already clearly defined in the 5 existing EPA Clean Air Act. The following 6 reference material was found through the American 7 Lung Association linked to the Natural Resources 8 Defense Council. The American Lung Association has 9 expressed its opposition to the weakening of 10 emission standards defined in the EPA Clean Air 11 Act.</p> <p>12 A comparison of the Bush Administration's 13 Clear Skies plan with the existing Clean Air Act 14 reveals:</p> <p>15 For mercury, a potent neurotoxin, proper 16 application of current law would reduce emissions 17 from 47 tons per year today to 5 tons per year by 18 2008. By comparison, the Bush plan aims for 15 19 tons per year by 2018, ten years later and three 20 times more.</p> <p>21 For sulfur dioxide, SO₂, which causes acid 22 rain and thousands of premature deaths from 23 respiratory disease, the EPA sought an SO₂ 24 emissions cap of 2 million tons by 2010 compared to 25 the Bush plan for a 3 million ton emissions cap by</p>	<p>1 our petition to the government for a redress of 2 grievances by failing to enforce the existing 3 environmental laws expressly intended to protect 4 the people of North Dakota and of the United States 5 from harm.</p> <p>6 I close with a quote from Theodore 7 Roosevelt: "Let us remember, also, that 8 conservation does not stop with natural resources, 9 but that the principle of making the best use of 10 all we have requires with equal or greater 11 insistence that we stop the waste of human life in 12 industry and prevent the waste of human welfare 13 which flows from the unfair use of concentrated 14 power and wealth in the hands of men whose 15 eagerness for profit blinds them to the cost of 16 what they do." Thank you.</p> <p>17 MR. FRY: As I stated earlier, my name is 18 Scott Fry. I'm an organizer with Dakota Resource 19 Council. I want to thank you for allowing Dakota 20 Resource Council and our members to provide 21 testimony today.</p> <p>22 The Dakota Resource Council believes that 23 North Dakota Department of Health's April 2002 24 sulfur dioxide PSD increment consumption analysis 25 is fatally flawed and should not be relied upon to</p>
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<p>1 2018.</p> <p>2 For nitrogen oxide, NO_x, which causes 3 lung-damaging ozone smog, the EPA sought a nitrogen 4 oxide cap of 1.25 million tons by 2012, compared to 5 the Bush plan to reduce emissions to 1.7 million 6 tons by 2018.</p> <p>7 The Bush plan leaves CO₂, carbon dioxide, 8 out of this plan, thus giving permission for 9 another generation of power plants that ignore 10 global warming.</p> <p>11 It is my conviction that these state and 12 federal entities, to include the Environmental 13 Protection Agency, the North Dakota Industrial 14 Commission, and the State Department of Health, 15 Environmental Health Section, funded as public 16 institutions, are failing in their duty to promote 17 the general welfare, and secure the blessings of 18 liberty to ourselves and our posterity by failing 19 to protect the property, health, and economic 20 security of the people that are living in North 21 Dakota and by failing to protect the property, 22 health, and economic security of future generations 23 of people who will live in North Dakota.</p> <p>24 It is my conviction that these same state 25 entities are also failing in their duty to act upon</p>	<p>1 determine the State's compliance with the Class I 2 SO₂ increments. The study did not follow EPA 3 guidance for determining the amount of increment 4 consumed. The Department inflated the baseline 5 emissions and discounted the current emissions of 6 each source to ensure less increment-consuming SO₂ 7 emissions. The study ignored sources that had 8 obtained variances from the Federal Land Managers. 9 Last, the Department decided not to recognize the 10 Fort Peck Indian Reservation's Class I status 11 granted by the EPA in 1984. The Department 12 essentially used every trick in the book to 13 eliminate the longstanding Class I SO₂ increment 14 violations being caused by North Dakota sources 15 with no concern whatsoever for the mandates of the 16 Clean Air Act to protect, preserve and enhance the 17 air quality of our national parks and wilderness 18 areas. DRC believes the Department's 1999 modeling 19 analysis should be used to define the emissions 20 reductions needed to bring the North Dakota and 21 eastern Montana Class I areas into compliance with 22 the Clean Air Act.</p> <p>23 The Department's past findings of SO₂ 24 violations undermine the credibility of its latest 25 study that supposedly finds no violations.</p>

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<p>1 The Department's October 1999 modeling 2 analysis showed significant violations in all of 3 North Dakota's Class I national parks and 4 wilderness areas and in eastern Montana's Class I 5 areas.</p> <p>6 The Department determined that the 1999 7 analysis was sufficient enough to justify denial of 8 Minnkota Power Cooperative's request to increase 9 capacity at its Milton R. Young power plant.</p> <p>10 The results of the 1999 study were no 11 surprise to the Department, who has been aware of 12 the Class I SO₂ increment violations in North 13 Dakota's Class I areas for the last 20 years 14 through the modeling analyses done for numerous PSD 15 permits in the early '80s.</p> <p>16 It wasn't until EPA asked North Dakota to 17 come into compliance with the PSD increments that 18 the Department decided to radically revise its 19 modeling analysis.</p> <p>20 The Department's current modeling analysis 21 ignores longstanding state and EPA policy for 22 determining the amount of PSD increment consumed.</p> <p>23 The April 2002 analysis admits the 24 Department used a nontraditional approach without 25 providing any rationale for departing from</p>	<p>1 baseline date with the highest operating hours and 2 production rate as representative of normal source 3 operation. To comply with the statutory definition 4 of baseline concentration, the baseline emissions 5 should be representative of the emissions 6 contributing to the baseline concentrations in 7 1977.</p> <p>8 The Department was also creative in 9 dealing with the fact that the sulfur content of 10 the lignite coal has been increasing since the 11 baseline date. Although EPA's guidance clearly 12 states that increases in sulfur content of coal 13 that occur after the baseline date consume the 14 available increment, the Department decided that 15 the companies anticipated burning the higher sulfur 16 coal at the time of the baseline date and thus the 17 Department justified using the average sulfur 18 content over the life of each coal mine in 19 determining baseline emissions. In some cases this 20 allowed for more than a 40 percent increase in 21 baseline emissions over what was reported as 22 average sulfur content by the sources in the two 23 years preceding the minor source baseline date.</p> <p>24 For current year emissions, the Department 25 used the most recent two years of continuous</p>
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<p>1 longstanding procedures.</p> <p>2 The Department's approach of modeling an 3 average baseline concentration for each area and 4 adding the allowable increment to the baseline 5 concentration is flawed because it creates a 6 constant allowable concentration across each Class 7 I area. The maximum concentration allowed under 8 the federal PSD increments should vary as the 9 baseline concentration fluctuates through the Class 10 I area over different meteorological conditions and 11 peak emission rates of the contributing sources.</p> <p>12 Because of these difficulties in setting a 13 maximum allowable concentration, the EPA procedures 14 of modeling the amount of increment consumption -- 15 or consuming emissions and comparing those modeled 16 concentrations to the PSD increment is the only 17 reliable method for showing compliance with the PSD 18 increment.</p> <p>19 To eliminate the existing increment 20 violations, the Department also inflated most 21 sources' baseline emissions and discounted current 22 emissions so the least amount of increment was 23 consumed.</p> <p>24 In determining baseline emissions, the 25 Department chose the two-year period close to the</p>	<p>1 emissions monitoring data even though they did not 2 yet have the data for the fourth quarter of 2001.</p> <p>3 The winter time frame is generally the time of peak 4 production for the North Dakota power plants, so 5 the omission of this data likely resulted in an 6 underestimate of current emissions.</p> <p>7 The Department also modeled hourly 8 emission rates determined on an annual average, 9 greatly smoothing out the peak emissions from each 10 facility. For example, the Department modeled Unit 11 2 at Leland Olds power plant at an SO₂ emissions 12 rate of roughly 8,400 pounds per hour. Yet, in 13 2000, the peak emissions rate averaged over a day 14 was 11,800 pounds per hour. EPA's modeling 15 guidelines require sources to be modeled at the 16 maximum allowable emissions rate. Considering that 17 this modeling is to show protection of the 18 short-term increments, the Department must model 19 allowable or peak 3-hour and 24-hour average 20 emission rates for this demonstration.</p> <p>21 The Department also illegally excluded 22 emissions from the two sources that had obtained 23 Class I variances from the Federal Land Managers, 24 the Little Knife gas plant and Dakota Gasification 25 Company, after EPA has recently stated that these</p>

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1 sources' emissions consume the applicable Class I
2 increment in spite of the variances that allowed
3 these sources to construct.

4 The Department also determined that it
5 would not allow the Class I increment at the Fort
6 Peck Indian Reservation retroactively to the North
7 Dakota sources that were in operation before EPA
8 redesignated the reservation to Class I status in
9 1984. Thus, although the reservation was granted
10 Class I status in accordance with the redesignation
11 procedures allowed by the Clean Air Act and EPA
12 regulations, the Department has rendered the
13 Tribe's Class I status as meaningless.

14 In summary, Dakota Resource Council
15 believes the Department's current modeling analysis
16 should be rejected due to its violation of EPA
17 requirements for determining increment
18 consumption. Instead, the Department's 1999
19 modeling analysis, which the Department and EPA
20 found to be sufficient a few years ago, should be
21 used as the guide for determining the State's
22 compliance with the PSD increments. The
23 Department's 1999 analysis likely underestimates
24 the amount of increment consumed, as well, because
25 the Department deviated from the default values

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1 recommended by EPA for input into the air quality
2 model. Nonetheless, we believe that it is the
3 analysis most in compliance with the mandates of
4 the Clean Air Act and any more analyses will only
5 delay bringing our Class I areas into compliance
6 with the Clean Air Act. The Department must
7 fulfill its responsibility to the public by
8 requiring the uncontrolled and undercontrolled
9 power plants and other sources in the state to
10 reduce SO2 emissions so there are no more increment
11 violations. If the State refuses to meet these
12 Clean Air Act requirements, then EPA must take over
13 the program to ensure our parks and wilderness
14 areas are protected as the Clean Air Act intended.

15 Thank you. I would be open for any
16 questions, if there are any.

17 MR. SCHWINDT: Thank you, Mr. Fry. Has
18 your organization conducted any type of legal
19 analysis or comparison of the Department's legal
20 views on this?

21 MR. FRY: No. We see this as not the
22 legal issue that the North Dakota Health Department
23 apparently thinks it is. We feel that it's fairly
24 clearcut. You have been doing this -- the Health
25 Department has been doing PSD modeling for 20

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1 years, and Mr. O'Clair and his department are well
2 aware of how they're supposed to be doing PSD
3 modeling, and the fact that you're deviating -- or
4 the fact that the Health Department is deviating in
5 the way that they are is just ridiculous to us and
6 I don't see it being a legal issue.

7 MR. BAHR: Mr. Fry, would you agree,
8 though, on some issues, for example, at the bottom
9 of your second page you said that the Department
10 illegally excluded emissions from the two sources
11 that have obtained Class I variances from the FLM.
12 The Department is arguing that that is legal and
13 EPA says, no, it's not. That is a legal issue that
14 needs to be resolved?

15 MR. FRY: Well, that is a legal issue.
16 When you get down to it, all of these are legal
17 issues because in the end this is most likely going
18 to end in a lawsuit of some kind or another. And I
19 think that's what this proceeding is for the most
20 part, is preparation for that. And I think -- but
21 in our opinion, this should not be legal issues.
22 You should have been -- the Health Department
23 should have been doing their job and should be
24 already revising their state implementation plan
25 because they know from their 1999 analyses that we

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1 are in violation of the Clean Air Act.

2 MR. BAHR: This isn't directly related to
3 that issue, but some of the first two presenters
4 talked about the plants that have been
5 grandfathered in. The SIP plan doesn't really
6 address those in any way.

7 MR. GREEN: Speak up.

8 MR. BAHR: The SIP plan doesn't directly
9 address those, does it? This plan doesn't
10 authorize the Health Department to say you have to
11 close your doors or anything like that?

12 MR. FRY: Well, they might. It depends on
13 -- the State is in charge of developing the state
14 implementation plan that would effectively reduce
15 the emissions so that the Class I areas in North
16 Dakota and eastern Montana are no longer in
17 violation of PSD. And whether that's done by
18 putting controls on grandfathered plants or whether
19 that's dealt with by having further controls on
20 plants that are more closely regulated by the Clean
21 Air Act because they were not grandfathered in,
22 that's the State's decision.

23 MR. BAHR: Thank you.

24 MR. SCHWINDT: Are there any other
25 questions of Mr. Fry?

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1 MR. WITHAM: It might be helpful to put
2 this slide up. Paul, can you hear me?
3 MR. GREEN: I can hear that. It was a
4 little man with a big voice.
5 MR. WITHAM: Hello, Mr. Fry. Up here
6 we've got one of the slides that Mr. O'Clair
7 presented in his testimony yesterday, and one of
8 those lines is this particular line showing from
9 1980 to 2001 the total emissions from all of the
10 major sources, which for the most part in North
11 Dakota are the coal-fired power plants, DGC, et
12 cetera, and you can see basically from 1980 to 2001
13 the total emissions have improved -- have
14 increased, but there's been a drop in those total
15 emissions in 2000 and 2001. I'm getting to the
16 question here. Now, Mr. O'Clair also talked about
17 the two types of sources. He talked about baseline
18 sources and increment-consuming sources. Okay.
19 Now, some of the testimony talked about some of the
20 baseline sources, like Leland Olds and Minnkota.
21 MR. FRY: Is there a question?
22 MR. WITHAM: Yes. Yes. Now, this line
23 and this line, some of those emissions -- the total
24 emissions are from baseline sources and some from
25 increment-consuming sources. What has been modeled

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1 traditionally are only the emissions from
2 increment-consuming sources, so as a matter of
3 policy if we determine and follow what you're
4 suggesting that there is a violation of the
5 increment, that's only these emissions -- it's not
6 the total emissions from all the source, but only
7 these emissions, and coming up with the graph that
8 shows predicted modeled concentrations from only
9 those increment-consuming sources, let's assume
10 that we take your argument and do that. Now --
11 then the law says we have to correct the increment,
12 bring them into compliance. Can the Department
13 then look to the baseline source -- sources and the
14 increment-consuming sources, or do we have to just
15 look for the direction of the increment to the
16 increment-consuming sources?
17 MR. FRY: Well, if there has been a change
18 in operation of the baseline source, either an
19 increase of SO2 emissions, which could come about
20 because of the increased sulfur content as the
21 mines have gotten deeper into their seams, then
22 those actually are increment-consuming and not just
23 purely baseline anymore, and so those sources would
24 have to be controlled in some way because they are
25 consuming increment. And it's obvious from the

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1 1999 modeling that we have consumed increment and
2 we are beyond the increment that we're allowed.
3 MR. WITHAM: Okay. You're saying that
4 we're modeling only the increment-consuming
5 sources, and, granted, some of the emissions from
6 baseline sources can be increment-consuming, but
7 you're saying that if we have to correct that
8 increment, we can look to baseline emissions also
9 and require those cuts, or are we limited to
10 correcting the increment as a matter of policy or
11 law only to the increment-consuming sources, which
12 are the sources in North Dakota that already have
13 pollution control devices?
14 MR. FRY: Well, not all increment-
15 consuming sources have pollution controls. Leland
16 Olds, and I have no idea if this is --
17 MR. WITHAM: Leland Olds is a baseline
18 source.
19 MR. FRY: It might be a baseline source,
20 but if their emissions have increased since the
21 baseline date in SO2, it is then an increment-
22 consuming source.
23 MR. WITHAM: Okay. So then you're saying
24 that we could force Leland Olds to cut back to
25 their baseline level, or can we force them to cut

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1 back even more?
2 MR. FRY: It's up to you -- it's up to the
3 State Health Department to determine how it's dealt
4 with, but if it's determined that there are
5 increment violations, then how that is dealt with
6 is up to Terry's office.
7 MR. WITHAM: Let's say it's your call,
8 that you're sitting in Terry's chair.
9 MR. FRY: I don't know everything that Mr.
10 O'Clair knows.
11 MR. WITHAM: Well, this is the top policy
12 issue we're dealing with.
13 MR. BAHR: Lyle, Lyle -- Lyle, I think you
14 need to ask questions.
15 MR. WITHAM: Okay.
16 MR. BAHR: This doesn't seem to be the
17 appropriate type of questions.
18 MR. WITHAM: One of the things that the
19 legal analysis talks about is that we model the
20 2000, 2001 emissions from these two points, and one
21 of the things the legal analysis talks about is
22 that at those levels it appears there may not be
23 violations. That's one of the purposes of this
24 hearing, whether to determine if that's the
25 appropriate approach or not. But the legal

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1 analysis also talks about in order to stop those
2 sources from increasing up to their allowable
3 emissions under their permit, to lock them in at
4 that level to make sure there aren't violations,
5 one of the things we think the law suggested and as
6 a matter of policy we are considering is whether or
7 not we have to at some level lock those sources in
8 at a lower emission level for the year. What are
9 your comments on that?

10 MR. FRY: That would be another decision
11 that would be up to the Health Department and
12 specifically Mr. O'Clair's department.

13 MR. WITHAM: Is that a policy, locking
14 them in at a lower annual level, that you would
15 advocate or not?

16 MR. FRY: I have no clue if that would
17 resolve the PSD violations.

18 MR. WITHAM: Assuming that it does.

19 MR. FRY: I'm not going to assume that
20 because I have no clue.

21 MR. WITHAM: Okay.

22 MR. FRY: I'm not going to make an
23 assumption that I can't base on any type of fact.

24 MR. SCHWINDT: Any other questions of Mr.
25 Fry?

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1 MR. WITHAM: I have a couple more
2 questions, Fritz.

3 MR. SCHWINDT: Okay.

4 MR. WITHAM: The preamble to the 1980
5 regulations says in part, and it's the section of
6 The Federal Register, the preamble that preceded
7 the rules that are the basis of the North Dakota
8 rules still in existence, and I quote, If increment
9 calculations were based on allowable emissions, EPA
10 believes that increment violations would be
11 inappropriately predicted. Now, the Department has
12 traditionally modeled allowable emissions. Are you
13 saying that we are locked into following an
14 allowable emission policy now because we've used it
15 for 20 years, or can we look at actual emissions?

16 MR. FRY: If actual emissions will
17 actually show a reasonable semblance of what is
18 going on, then, yes. But according to the
19 regulations -- or according to the guidelines and
20 the operation -- the operating procedures that the
21 Health Department and EPA have been following since
22 PSD has been put into place has been to use
23 allowable emissions, and we feel that that is going
24 to be much more conservative in its estimation of
25 increment consumption and much more protective of

1 the environment and the citizens in North Dakota
2 and it will actually be complying with -- or it
3 will make North Dakota compliant with the law.

4 MR. WITHAM: There's no question that it
5 is more conservative to use allowable, but if we
6 use a definition -- or if we use actual emissions,
7 which definition of actual emissions should we
8 use? Should we use the definition in the rules --
9 in the state rules, in the federal rule, or should
10 we go off on something that is not in the rule?

11 MR. FRY: Well, as far as I understand,
12 you used actual emissions -- or the State Health
13 Department used actual emissions in the 1999
14 modeling analysis, and if that's not the case, Mr.
15 O'Clair, you can clarify it for me, but we have
16 already said that the 1999 modeling analysis is the
17 one that you should use.

18 MR. WITHAM: And that used allowables.

19 MR. FRY: Did that use allowables, or did
20 it use actual? I am not positive.

21 MR. O'CLAIR: Scott, just one of the
22 things I wanted to clarify, I guess, is that based
23 on new source review, when you have a new facility
24 coming in, typically you do use allowable because
25 you don't know what that new emission rate is. The

1 particular animal that we're dealing with here,
2 there is no, you know, new source that we're
3 looking at, so we're kind of out of the seam, so to
4 speak, of the new source review program. We're
5 actually going back to see if there actually was a
6 problem, so we weren't using allowable emissions
7 for our most recent analysis.

8 MR. FRY: You weren't using allowable or
9 you were?

10 MR. O'CLAIR: We were not using allowable
11 for our most recent one. In 1999 we did use
12 allowable.

13 MR. FRY: Okay. In 1999 you did use
14 allowable. Well, I don't know for sure. And I
15 don't know all the technicalities of these issues.
16 I've had my nose buried in books that go far over
17 my English major's head, and I've done my best to
18 understand these issues, and as far as I can
19 understand them, allowable emissions is the way we
20 should go on this. And using actual emissions has
21 the tendency, especially in the method that the
22 State did in their April 2002 analysis show no
23 violations, which is not the case in our mind.

24 MR. WITHAM: No further questions.

25 MR. SCHWINDT: Okay. Any other

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1 questions? Bob.

2 MR. HARMS: Just a couple, Fritz. Scott,
3 I won't take up a whole lot of time, but what's
4 your understanding of the PSD program? What was
5 your -- what's your understanding of the
6 congressional intent of that program? What was it
7 designed to do?

8 MR. FRY: As far as I understand it, PSD
9 was put in place to, as the name suggests, prevent
10 significant deterioration of air quality in our
11 class areas, whether they're Class I, Class II or
12 Class III.

13 MR. HARMS: Prevent significant
14 deterioration of the air quality in those classes?

15 MR. FRY: Yes.

16 MR. HARMS: So that one of your -- you may
17 have mentioned that, as well. One of your members,
18 I think, spoke about health concerns, but the PSD
19 program is not a health -- you're not suggesting
20 it's a health-based issue that we're talking about
21 here at this hearing, are you?

22 MR. FRY: In our opinion, any controls
23 that would be put on power plants that exist in
24 North Dakota that come about from the acid rain
25 program, that come about because of PSD, that come

1 quality in North Dakota is actually improving. Do
2 you -- does DRC have any data or studies to show
3 otherwise?

4 MR. FRY: No. The only information that
5 we have is anecdotal and allegorical, our own eyes
6 and senses.

7 MR. HARMS: Okay. The last question.
8 From your organization's perspective, do you see
9 the goal, the direction of the State regulatory
10 effort as being one of allowing for reasonable
11 economic development in the State while also
12 providing continued improvement of the State's air
13 quality? Would that be a reasonable goal that your
14 organization would embrace?

15 MR. FRY: No. I think the Health
16 Department's job is to enforce the environmental
17 laws that exist and not to advocate those interests
18 to industry.

19 MR. HARMS: No. That's not what I asked.
20 Is a reasonable goal for the State to have economic
21 development coupled with -- coupled with continued
22 improvement of its air quality?

23 MR. FRY: I think it would be a reasonable
24 goal, but I don't know that that's actually what's
25 happening.

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1 about because of any of the clauses within the
2 Clean Air Act are going to have a beneficial effect
3 on the health of North Dakotans. The State's
4 study, when was it, last year, maybe the year
5 before, on asthma in coal country, while it did not
6 tie causality, showed a 15 percent higher rate of
7 asthma in coal country than the rest of this state,
8 and the only thing that is different in coal
9 country from the rest of the state -- agriculture
10 is not different, the trains go through it just
11 like every place else, the only thing that's
12 different are the coal plants.

13 MR. HARMS: I don't want to debate the
14 pros and cons of the children's health study. All
15 I want to know is, are you suggesting that the PSD
16 program was designed as a health-based program?
17 You're not, are you?

18 MR. FRY: I do not believe it was.

19 MR. HARMS: Okay. Just a couple other
20 quick questions. So that when we're talking about
21 the PSD program being designed to prevent
22 deterioration of air quality, I guess I have been a
23 little perplexed in this debate, as well. The
24 slides that Mr. Witham showed and that Terry
25 O'Clair had up yesterday seem to show that air

1 MR. HARMS: Of course, we're not done yet,
2 either.

3 MR. FRY: This is true.

4 MR. SCHWINDT: Any other questions? No
5 other questions. Thank you, Scott.

6 MR. KURSZEWSKI: I'm sorry. Could I ask a
7 question of Scott, I mean, even though we're in the
8 same organization?

9 MR. BAHR: Sure. Come on up. Just don't
10 be too mean.

11 MR. KURSZEWSKI: I may have switched sides
12 here. My question is to Scott, but I think it's
13 also in listening to parts of this discussion, and
14 I know this is very complicated, but I would have
15 to ask Scott, in his view as a representative for a
16 grassroots organization that represents a wide
17 range of people in this state, would you feel that
18 some of the discussions that you're involved in are
19 becoming more an issue of agencies claiming to have
20 done their job, I've done my job, I've done my job,
21 I've done my job, and somewhere along the line are
22 we getting a sense that not only people's jobs are
23 being secure, but what about the health and safety
24 of the people in this state?

25 MR. FRY: Well, within Dakota Resource

1 Council, that is definitely the direction of the
2 debate, so thanks for your question, Chuck.

3 MR. SCHWINDT: Okay. Any other
4 questions? Thank you, Scott.

5 MR. FRY: Thank you.

6 MR. SCHWINDT: Next, we'll go to Great
7 Northern Properties, Rich Voss.

8 MR. VOSS: My name is Richard Voss. I'm
9 the vice president for Great Northern Power
10 Development.

11 We appreciate this opportunity to
12 contribute our comments and analysis before the
13 Department of Health on its proposed determination
14 regarding the adequacy of the North Dakota state
15 implementation plan to prevent significant
16 deterioration.

17 As one of the lignite Vision 21 Program
18 participants, Great Northern Power Development is
19 currently investigating the feasibility of building
20 a 500 megawatt-class power plant in western North
21 Dakota. The lignite Vision 21 Program is a
22 partnership between industry and the State of North
23 Dakota to explore the possibilities of applying
24 state-of-the-art generation and environmental
25 pollution control technologies in the development

1 of clean, low-cost electricity.

2 We are committed to a thorough
3 investigation of all aspects of our project
4 development, especially in the environmental
5 arena. In that light, we have enlisted the
6 services of Bison Engineering, a professional air
7 modeling consultant, to more fully assess the
8 differences between EPA and the State's air quality
9 studies. Bison's representative will present these
10 results in testimony immediately following my
11 remarks here.

12 We hope that our comments will help all
13 parties to arrive at a commonsense solution to
14 North Dakota's air quality management program. It
15 is imperative that the regulatory agencies follow
16 the intent of the law and that their technicians
17 utilize the most logical approach to evaluate
18 environmental impacts. We look forward to the
19 success of these hearings and hope that our
20 comments can help form a workable solution to
21 balance environmental quality and economic
22 development.

23 I now yield the floor to Mr. Rich
24 Southwick of Bison Engineering, who will summarize
25 our findings.

1 MR. SOUTHWICK: My name is Richard
2 Southwick. I hold the title of senior scientist,
3 Bison Engineering in Helena, Montana.

4 Bison, on behalf Great Northern Power
5 Development, offers the following comments with
6 regard to the proposed determination on the
7 adequacy of the North Dakota SIP to prevent
8 significant deterioration. Bison is an
9 environmental consulting firm headquartered in
10 Helena, Montana, and focused primarily on the
11 provision of air quality consulting services to
12 industry. Great Northern asked Bison to review
13 both the North Dakota Department of Health and the
14 U.S. Environmental Protection Agency reports on
15 their respective assessments of the status of the
16 sulfur dioxide Class I PSD increment compliance in
17 the Class I areas located in western North Dakota
18 and northeastern Montana and to report our
19 findings. My testimony today summarizes the
20 findings of that review.

21 The EPA and the Department have been
22 working to develop an appropriate model for use in
23 determining Class I increment compliance. The air
24 dispersion model selected by both agencies for this
25 effort is the Calpuff air dispersion model

1 developed by Earth Tech. Calpuff is a computer
2 model designed to simulate the long-range
3 transportation of air pollutants. It is
4 unofficially approved by EPA and is commonly used
5 today to predict the far field impacts of air
6 pollutant emissions. It uses source-specific
7 inputs (such as stack heights and emission rates)
8 and area-specific inputs (such as meteorological
9 data and terrain data) to predict ground level
10 concentrations of air pollutants at user-specified
11 locations away from the sources of the pollutant
12 emissions.

13 The Calpuff model also allows the user to
14 select from a variety of different settings that
15 determine how the model will process inputs. EPA
16 used virtually all of the settings initially
17 selected by the Department to tune the model to
18 best simulate the conditions found in North
19 Dakota. EPA reported that it reviewed the basis
20 for the selection of each of the nondefault
21 settings selected by the Department and concluded
22 that the settings were appropriate.

23 Although both agencies used essentially
24 the same Calpuff model, the same area-specific
25 inputs and many of the same source-specific inputs,